IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 451 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHVERLAL VASHRAMBHAI MAHERIA

Versus

RAJESH NATVARLAL VYAS

Appearance:

MR MUKTESH V PATEL for Petitioner

Mr K G Sheth, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2001

ORAL JUDGEMENT

The present Criminal Revision Application has been filed under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code'), challenging the judgment and order dated 25.8.2000 recorded by the learned Special Judge, Court No.17 of Ahmedabad City

Sessions Court in Atrocity Special Case No.10/2000 under which the learned Judge acquitted the first respondent from offence punishable under section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the said Act') as well as from the offence punishable under sections 294(Kh) and 506(1) of Indian Penal Code. It appears to be the case of the present petitioner before the trial court as the original informant and complainant, that the present petitioner and contesting respondent no.1 who was accused in the aforesaid Atrocity Special Case No.10/2000, were partners in a firm. The petitioner also alleged that the account was not settled and, therefore, there was some negotiation for settlement of account. Even notice was also issued but the account was not settled. Therefore, the petitioner contacted the first respondent for the settlement of accounts in presence of some friends. The petitioner then, alleged that during the course of the aforesaid conversation, the first respondent got angry and started abusing the present petitioner. That he also threatened the present petitioner and ultimately FIR was filed by the petitioner which was registered before the Vatva Police Station in Ahmedabad City being C.R. No.3160/99.

2. The investigating police officer undertook investigation and at the conclusion of the investigation, he submitted a charge-sheet before the learned Metropolitan Magistrate, Court no.19 on 6.8.1999. The learned Magistrate enlarged respondent no.1 on bail but since he did not have jurisdiction to try the said case, he committed the said case to the Court of Sessions under Section 209 of the Code on 9.2.2000. It was accordingly registered as Atrocity Special Case No.10/2000 before the said Court. On 29.3.2000, charge was framed at Exh.3 for the said offence against the first respondent. The first respondent pleaded not guilty to the said charge and, therefore, the learned Special Judge proceeded to examine the witness. The prosecution submitted four witnesses before the trial court. On conclusion of the oral evidence, the learned Special Judge recorded further statement of the contesting respondent under section 313 of the Code. The arguments were heard and thereafter, the learned Special Judge pronounced the aforesaid judgment on 25.8.2000 holding that the offence against the contesting respondent has not been established beyond reasonable doubt and, therefore, he directed that the contesting respondent be acquitted from the aforesaid offence.

3. Feeling aggrieved by the said judgment and

acquittal order of the learned Special Judge, the petitioner has preferred this Revision before this Court as the original informant and complainant in the said matter. At the hearing learned Advocate for the petitioner has argued the matter at length. He has contended that the learned Addl.Sessions Judge has not properly appreciated the evidence and committed serious illegality in extending benefit of doubt to the contesting respondent. On the other hand, learned APP, Mr K G Sheth has submitted that there was no illegality committed by the learned Sessions Judge in acquitting the contesting respondent. He also submitted that this court exercising revisional power has very limited scope for exercising jurisdiction and, therefore, it would not be possible even on technicalities to allow the present revision. In fact, learned Advocate for the petitioner has taken me through the entire judgment recorded by the learned Special Judge. Time and again, he submitted that the learned Judge has committed serious error at so many places. It is also contended that the offence has taken place in such a small place. There was no possibility of any independent witness. He also submitted that it was a non-working day and, therefore, no witness could be expected. He, therefore, submitted that the learned Special Judge has committed serious illegality in acquitting the contesting respondent for want of corroboration of independent witness to the evidence of the petitioner. He also submitted that notice issued by the petitioner to the contesting respondent has been wrongly dealt with by the learned Special Judge. That there was mention about the applicability of section 19 of the Probation of Offenders Act, 1958 and the section was wrongly quoted in the notice. That the learned Special Judge ought to have ignored the said error committed in issuing the said notice and referring section 19 therein. That therefore, the Court should allow this Revision Application and set aside the judgment and acquittal order of the trial court. He also submitted that other appropriate orders may also be passed as per the requirement in the matter.

4. If we refer to the provision of sub-section (3) of section 401 of the Code, it is apparently clear that the prayer made by the petitioner cannot be granted by this court and the Court has no jurisdiction to extend the said benefit to the petitioner. Sub-section (3) of section 401 of the Code may be referred for ready reference as under:

"(3) Nothing in this section shall be deemed to authorise a HIgh court to convert a finding of

acquittal into one of conviction."

On a bare perusal of subsection (3) of section 401, it becomes clear that the High court exercising revisional powers under this Code cannot convert finding of acquittal into finding of conviction. In other words, when an acquittal order has been recorded by the trial court, then this court, as court of criminal revision, cannot set aside the order of acquittal and cannot convict the accused person.

5. On the other hand, we refer to the relief claimed by the petitioner, which may be reproduced for ready reference from para 3 (C) and (D) as follows:

"(3)(C) To quash and set aside the order dated 25.8.2000 passed by the Hon'ble court no.17 of Ahmedabad to acquit the accused in Special Case No.10/2000 (Atrocity).

(D) To order for conviction of the accused in Special Case No.10/2000 of Special Court No.17 of Ahmedabad."

So on the one hand, the petitioner has claimed to quash and set aside the order dated 25.8.2000 passed by the learned Special Judge in Special Case No.10/2000, at the same time, the petitioner has prayed for conviction of the accused in that case. Therefore, the prayer of the petitioner is to convict the contesting respondent. As said above, it is not legally permissible to convict the contesting respondent when he has already been acquitted by the competent court.

6. It is true that in certain cases, revisional powers can be exercised but in the present case, it is not the case of the prosecution or the petitioner that some witnesses have been left out. It is not the case of the petitioner that some inadmissible evidence was made admissible and some admissible evidence was treated to be inadmissible, and therefore, was overlooked and not considered by the trial court. No evidence has been overlooked, no witness has been overlooked, no witness has been dropped. In that view of the matter, even remand of the case to the trial court is impermissible.

7. If something is lacking then the remand may be a good order and on remanding the matter, the court concerned can take additional evidence and reconsider the case on the strength of the said additional evidence. When there is no possibility of additional evidence, then

in that case, remand will not serve any purpose and when the remand is not likely to serve any purpose, it is not legally permissible to remand the case back to the learned Special Judge for trial according to law. Even otherwise, this Court, as a court of revision on criminal side, cannot remand the matter back to the trial court for reappreciation of evidence, if the appreciation is not proper. In that view of the matter, when the powers of the Court are very limited, it would not be possible to allow this revision and convict the contesting respondent or to remand the matter back to the trial court for fresh appreciation of evidence.

8. Learned APP Mr K G Sheth, has relied upon a decision in the case of Bansilal v Laxman Singh reported in AIR 1986 SC 1721. There it has been observed in paras 9 and 10 that it is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court, that the High court is empowered to set aside the order of acquittal and direct a retrial of the acquitted accused. The Supreme Court also observed that the mere circumstance that a finding of fact recorded by the trial court may in the opinion of the High Court be wrong, will not justify the setting aside of the order of acquittal and direct retrial of the accused. It is also observed that even in an appeal, the Appellate Court would not be justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. It is further observed that the revisional power of the High Court is much more restricted in its scope. Then we find other decisions also wherein also it has been clearly laid down that the jurisdiction and power of this Court while entertaining criminal revisions are very limited. For this purpose, we can consider a decision in the case of Ramaben v. State of Gujarat reported in 1992 (2) GLR 1530, wherein it has been laid down that reappreciation of evidence is ordinarily not permitted in a criminal revision application unless a very strong case is made out and shown that the findings are perverse. It is further observed that simply because the revisional court thinks that the lower court has taken an erroneous view in recording same findings, reappreciation of evidence cannot be resorted to. It is further observed that the finding of fact is not to be disturbed unless it is found to be perverse.

9. In the case of state v. Mansukhlal Lavchand Choksi, reported in 1993 (2) GLH 849, it has been observed that when the Appellate Court agrees with the

logic and reasoning of the trial court and confirms the same it does not require to give detailed and lengthy reasons. It is also observed that the Appellate Court should be slow and reluctant to interfere with the acquittal appeal unless the same is perverse and eminently opposed to the evidence on record. Therefore, the aforesaid decision make it clear that the powers, jurisdiction and function of this Court entertaining the Criminal Revision are very limited and, therefore, the Court has to be within the four corners of those principles enunciated in the above decisions.

10. The provisions made in Section 401 (3) also says that this Court cannot convict the accused persons who is acquitted by the trial court while exercising jurisdiction under the Code as a Court of Revision. An attempt was made to argue that when a private complainant files FIR and ultimately when it is taken up before the Court, the matters are in the hands of Public Prosecutors and the original complainant or informant has absolutely no voice in the trial. But at the same time, a private complainant can also engage an Advocate and can give instructions to the Public Prosecution but the trial remains in the hands of Public Prosecutor. If there is any grievance against the existing law, remedy is not before this Court but it lies elsewhere. This Court is required to consider what the law is. This court is not expected to say as to what the law should be. Therefore, considering the existing law, this court is not in a position to convict the present respondent even if the findings and appearance of evidence by the trial court are found to be erroneous or wrong.

11. In above view of the matter, it is absolutely clear that there is no merit in this Revision Application and consequently, this revision is required to be dismissed at the admission stage. In the aforesaid view of the matter, this Revision Application is ordered to be dismissed at admission stage.

Date: 27.4.2001 [D P Buch, J.]
msp.